

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EMILY BARBOSA,

Case No.:

Plaintiff,

NOTICE OF REMOVAL

-against-

INSERRA SUPERMARKETS, INC. and SHOPRITE
OF WEST NYACK #288,

Defendant.
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Defendants, INSERRA SUPERMARKETS, INC. and “SHOPRITE OF WEST NYACK #288”, (“INSERRA”) by their attorneys, FISHMAN MCINTYRE LEVINE SAMANSKY P.C., respectfully petition the United States District Court, Southern District of New York, upon information and belief, as follows:

1. This case was originally commenced on or about February 17, 2022, in the Supreme Court of the State of New York, County of Rockland. The suit is identified in the Supreme Court as Emily Barbosa v. Inserra Supermarkets, Inc and Shoprite of West Nyack #288, Index Number 30673/2022. A true copy of plaintiff’s Summons and Verified Complaint is cumulatively annexed hereto as **Exhibit A**.
2. INSERRA SUPERMARKETS, INC. first received notice of plaintiff’s Summons and Complaint on or about February 23, 2022. See **Exhibit B**.
3. The grounds for removal are based on the original jurisdiction of this Court under 28 U.S.C. § 1332, which allows this court to hear matters based on diversity of citizenship of the parties. INSERRA filed an Answer to plaintiff’s Complaint in the Supreme Court, the State of New York, County of Rockland on March 11, 2022. A true copy is annexed hereto as **Exhibit C**. As can be seen from Exhibit C, there is no entity, corporation or individual known as “SHOPRITE OF WEST

NYACK #288". Rather, it is merely a trade name. Indeed, a search of the New York Department of State Division of Incorporations under "SHOPRITE OF WEST NYACK" as well as "SHOPRITE OF WEST NYACK #288" fails to reveal any returns. Rather, the same is merely an internal identifier for this particular store, allowing both INSERRA and the public at large to identify the particular "SHOPRITE" as being in West Nyack, New York.

4. INSERRA is a foreign business corporation incorporated in New Jersey, with its principal place of business in Mahwah, New Jersey. A true copy is annexed hereto as **Exhibit D**.

5. Plaintiff's Complaint in the Supreme Court of the State of New York, County of Rockland, asserts monetary damages relating to personal injuries in a non-specified amount. However, Plaintiff specifically claims that as a result of the incident complained of therein, the plaintiff "was caused to sustain serious injuries and to have suffered pain, shock and mental anguish; that these injuries and their effects will be permanent; and as a result of said injuries Plaintiff has been caused to incur, and will continue to incur, expenses for medical care and attention; and, as a further result, Plaintiff was, and will continue to be, rendered unable to perform Plaintiff's normal activities and duties and has sustained a resultant loss therefrom." (See **Exhibit A**, plaintiff's Complaint, paragraph 44).

6. At or about the time INSERRA filed an Answer to plaintiff's Complaint, INSERRA served upon plaintiff a number of discovery demands, including a demand for a supplemental statement of damages pursuant to C.P.L.R. § 3017, as well as a Request to Admit.

7. By way of "Response to Demand for Statement of Damages" dated June 21, 2022, plaintiff has demanded damages in the amount of "One Million Dollars (\$1,000,000.00)". A true copy of said response is annexed hereto as **Exhibit E**.

8. Based upon the foregoing, there can be no doubt that the amount in controversy herein exceeds \$75,000.00, exclusive of interest and costs. Indeed, plaintiff has claimed damages of over 13-fold such

jurisdictional threshold!

9. In addition, this notice of removal is filed within 30 days of plaintiff's damage disclosure served on INSERRA's counsel office via email on June 21, 2022.

10. At or about the same time INSERRA served its initial discovery demands upon plaintiff, INSERRA also served on plaintiff a Request to Admit. A true copy of said request is attached hereto as **Exhibit F**. Plaintiff never responded to the Request to Admit. Therefore, pursuant to CPLR § 3122, plaintiff's failure to timely respond to the Request to Admit – within thirty days – results in plaintiff admitting that as of the time of the instant cause of action arose, plaintiff was in fact a citizen of the State of New York. Moreover, in plaintiff's Summons and Complaint, plaintiff alleges she resides in Rockland County. (See plaintiff's Summons as well as plaintiff's Verified Complaint, paragraph 1) (**Exhibit A**). Thus, plaintiff was a citizen of the State of New York as of the time the instant cause of action arose.

11. As referred to above, INSERRA is a corporation, incorporated in the State of New Jersey, with its principal place of business in New Jersey as well. (See **Exhibit D**).

12. Based upon the foregoing, diversity of citizenship exists. Plaintiff is a citizen of the State of New York. On the other hand, INSERRA is a foreign business corporation, incorporated in the State of New Jersey and having its principal place of business in New Jersey. As referred to above, "SHOPRITE OF WEST NYACK #288" is a nonexistent entity or individual, and therefore is not capable of being sued. As a non-existing entity or individual, it is not a citizen or resident of anywhere or anything. Therefore, this action is between citizen of the State of New York (plaintiff) and a corporation other than New York, the Defendant, INSERRA.


13. Written notice of the filing of this Notice of Removal has been given to all parties in accordance with 28 U.S.C. §1446(d), as evidenced in the annexed Certificate of Service.

14. Promptly after filing this Notice with the Court and the assignment of a civil docket number, a copy of this Notice will be filed with the Supreme Court of the State of New York, County of Rockland, in accordance with 28 U.S.C. §1446(d).

WHEREFORE Petitioner, INSERRA SUPERMARKETS, INC., including being improperly sued in this action as “SHOPRITE OF WEST NYACK #288”, defendant in the action described herein now pending the Supreme Court of the State of New York, County of Rockland, under Index No. 30673/2022, prays that this action be removed therefrom to this Honorable Court.

Dated: New York, New York
July 18, 2022

Yours etc.,



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